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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF MASSACHUSETTS

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5 IN RE: NEW ENGLAND COMPOUNDING ) MDL NO. 13-02419-RWZ  
6 PHARMACY CASES LITIGATION )  
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17 BEFORE: THE HONORABLE RYA W. ZOBEL  
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19  
20 **STATUS CONFERENCE**  
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22 John Joseph Moakley United States Courthouse  
23 Courtroom No. 12  
24 One Courthouse Way  
25 Boston, MA 02210

April 10, 2014  
2:00 p.m.

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Official Court Reporter  
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Boston, MA 02210  
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11       FOR PAUL D. MOORE, IN HIS CAPACITY AS CHAPTER 11 TRUSTEE OF  
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(Appearances continued on the next page.)

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## P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Rya W. Zobel, United States District Court Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on April 10, 2014.)

THE COURT: Good afternoon. Please be seated.

COURTROOM DEPUTY CLERK URSO: This is 13-MDL-2419, In Re: New England Compounding Cases.

THE COURT: Good afternoon those on the telephone with whom I may not have spoken before.

This is the docket sheet (indicating).

MR. SOBOL: That's not the file. That's the docket.

THE COURT: Simply identify those of you who are actively involved in these matters. The first inch-and-a-half is just the list of the cases. There has to be a simpler way to do this. I charge you with trying to figure out what it might be.

Plaintiffs, I think we start with Mr. Sobol, right?

MR. SOBOL: Good afternoon, your Honor. Tom Sobol for the lead counsel.

THE COURT: For some reason you don't appear until Page 10 or thereabouts.

MR. SOBOL: As you know, your Honor, I'm usually trying to hide.

1 THE COURT: I can understand that.

2 MR. SOBOL: While I'm standing, your Honor, you're  
3 looking for that, do you have the proposed agenda?

4 THE COURT: I have it. Thank you very much.

5 Okay. Mr. Sobol. Ms. Parker.

6 MS. PARKER: Yes, your Honor.

7 THE COURT: And Mr. Stranch.

8 MR. STRANCH: That's correct, your Honor.

9 THE COURT: Who else is at counsel table?

10 MR. CHALOS: Mark Chalos, your Honor, for the PSC.

11 MR. FENNEL: Patrick Fennell, your Honor, also for  
12 the PSC.

13 THE COURT: Now, that's it.

14 For defendants. Mr. Fern.

15 MR. FERN: Good afternoon, Judge.

16 THE COURT: Mr. Tranen.

17 MR. TRANEN: Yes, your Honor.

18 THE COURT: Okay, got you. Mr. Moriarty?

19 MR. MORIARTY: Good afternoon, your Honor.

20 THE COURT: This is much easier. I need to know who  
21 is next to Mr. Tranen.

22 MR. GAYNOR: Robert Gaynor on behalf of the  
23 individuals, your Honor.

24 THE COURT: You know what I would ask? If counsel  
25 could, please, before the next meeting let me have a list of

1 those who are actually going to participate in these  
2 proceedings and then I won't have to wander through this  
3 entire docket sheet, which has mostly people who never say a  
4 peep.

5 MR. SOBOL: We'll file that as an attachment to the  
6 agenda.

7 THE COURT: That would be very helpful. Thank you  
8 very much.

9 I think I'll just give up and you identify yourselves  
10 if you need to speak. So, let us turn to the agenda, which is  
11 really much more important.

12 Mr. Sobol, I guess you're going to give the report to  
13 the Court.

14 MR. SOBOL: As well as two other folks, at least,  
15 your Honor, but let me start by saying this:

16 The first matter, of course, on the proposed agenda  
17 is the status of the proposed settlement in principle with the  
18 insiders, and just a few -- a couple of sentences about that  
19 first just to make it clear.

20 The proposed settlement is with the Cadden and  
21 Conigliaro families and various entities that they own and  
22 control that are affiliated with them. The notion --

23 THE COURT: And their insureds?

24 MR. SOBOL: Excuse me?

25 THE COURT: And their insureds?



1 MR. SOBOL: That's correct. As well as the two other  
2 insurers. There are some insurers with whom there is not a  
3 solution yet, but there are two insurers with whom there is a  
4 proposed settlement.

5 There has been a lot of progress, a lot of lawyering  
6 over the past four years, and my understanding is that the  
7 settlement should be signed in a matter of days or shortly,  
8 but that is certainly the way I express it because I'm trying  
9 to push people in a matter of days, but I think we can report  
10 shortly.

11 Also, to remind the Court what that means and what it  
12 does not mean. What it means is that there will be an  
13 agreement now signed to go forward with a funding program as a  
14 part of a bankruptcy plan that would occur basically over the  
15 months of 2014, and that's, essentially, I think the best  
16 report with respect to that at this time.

17 I will say, however, that there's -- the reverse side  
18 of that, that album, if you will, is a description of what's  
19 therefore left, which Ms. Johnson Parker will handle at a  
20 later point in the proceeding, but I think I'll just stick  
21 with the proposed settlement at this point and yield to my  
22 brother.

23 MR. GOTTFRIED: Good afternoon, your Honor. Michael  
24 Gottfried for the trustee.

25 I think I would add just a little bit to Mr. Sobol's

1 report. The settlement with NECC's insurers --

2 COURTROOM DEPUTY CLERK URSO: Is that on? That's not  
3 on. There's a button in the back that you can press to make  
4 it green.

5 MR. GOTTFRIED: My apologies, your Honor.

6 THE COURT: Start again.

7 MR. GOTTFRIED: So, Michael Gottfried for the --

8 THE COURT: The people on the phone couldn't hear you  
9 without the microphone.

10 MR. GOTTFRIED: Certainly. Michael Gottfried for the  
11 trustee.

12 Just add a couple of points to Mr. Sobol's report.  
13 The settlement with the two NECC insurers is due to be signed  
14 tomorrow by the insiders and the insurers. I think there are  
15 still one to two issues with the insiders that people are  
16 working very hard at resolving and we are hopeful that that  
17 will be resolved shortly.

18 Once those agreements are signed -- and we expect  
19 that they all will be resolved -- they'll be filing a motion  
20 with the bankruptcy court for approval of those settlements.  
21 It will be our anticipation that probably about 30 days or so  
22 after those are filed, to hold a hearing and at that point the  
23 settlements, hopefully, will be approved by the bankruptcy  
24 court.

25 THE COURT: Does the settlement -- or do the

1 settlements allocate funds as between the unsecured creditors  
2 and other creditors and the plaintiffs in this case?

3 MR. GOTTFRIED: I will let Mr. Molton handle that.

4 MR. MOLTON: Your Honor, David Molton for the  
5 creditors' committee from Brown Rudnick.

6 These settlements merely are the funding mechanisms  
7 by which the moneys are going to go into the estate. There  
8 will then be -- and we anticipate -- all the bankruptcy  
9 parties anticipate as the spring comes around and turns into  
10 early summer, that there will be planned discussions, planned  
11 negotiations and planned drafting that will allocate those  
12 moneys into various pots: A tort trust, a non-tort general  
13 creditors' trust, or maybe that will be left with the  
14 post-confirmation debtor for the purpose of distribution to  
15 general unsecured tort claimants, but that's a subject that is  
16 all on our minds, but that isn't the part of the job. The  
17 settlements just get the money over to the bankruptcy estate  
18 where the parties will be engaged in discussions to create a  
19 plan that fairly and equitably allocates that money in  
20 accordance with the bankruptcy code.

21 THE COURT: There are several motions pending now  
22 that appear, at least on the part of some of the parties, to  
23 hinge on the settlement, and I wonder whether they will be  
24 ripe when this is signed or will those be -- from the point of  
25 view of those who object to the motions going forward, would

1 they hinge on -- hold it just a second, Mr. Sobol.

2 MR. SOBOL: I'm sorry.

3 THE COURT: Would the resolution of those motions,  
4 like discovery, would that be something that should be decided  
5 independent of the settlement after the signing of the funding  
6 or is that -- should there still be some deference paid to the  
7 bankruptcy court with respect to those kinds of issues?

8 MR. GOTTFRIED: Well, the trustee's position, as  
9 indicated in its recent filing, is that it thinks that -- he  
10 thinks that the stay should remain in place at least until  
11 such time as the settlements are approved by the bankruptcy  
12 court. At that point he thinks there should be a discussion  
13 as to what should happen next and, at a minimum, before  
14 discovery just gets initiated, there should be meet-and-  
15 confers, a landscape that he believes will be changed at that  
16 point, and there should be a -- if it's decided that discovery  
17 does need to go forward at that point, that it could be done  
18 through the meet-and-confer process in an orderly, targeted  
19 fashion.

20 The worst thing here would be to have the estate  
21 burdened by getting 50 requests from 50 different parties as  
22 opposed to some, you know, coordinated process.

23 So, our view is certainly at this point, those  
24 motions would be best taken up after the settlements are  
25 approved and then we could talk about the process that I just

1 suggested to the Court.

2 THE COURT: I wasn't really thinking of hearing  
3 argument at the moment, but if you want to make a comment,  
4 that's fine.

5 MR. SOBOL: We'll address it later on, then, and I'll  
6 save my powder for then.

7 THE COURT: Okay. But you're still -- no. Ms.  
8 Parker now, right? Yes?

9 MS. PARKER: Yes, your Honor, if you're ready to move  
10 on to mediation efforts.

11 THE COURT: Okay.

12 MS. PARKER: So, as the Court is aware, we have  
13 various parties that are participating in both a court-  
14 sanctioned mediation process as well as a separate private  
15 mediation arrangement. On the first matter, I'll turn to Rick  
16 Ellis to discuss the status of the ARL mediation.

17 MR. ELLIS: Yes, your Honor. Rick Ellis for the  
18 plaintiffs.

19 We had a two-day mediation session last week and I'm  
20 pleased to report we have reached a settlement in principle  
21 with ARL, which is the outside testing laboratory, and we're  
22 in the process of drafting settlement papers as we speak.

23 THE COURT: This is the Cleanroom defendants?

24 MR. ELLIS: This is the outside testing company.  
25 They tested the final products -- or the products that were

1 shipped out.

2 THE COURT: Okay.

3 MS. PARKER: As to the other parties in mediation,  
4 your Honor, Liberty, who is the entity that built and  
5 installed the Cleanroom.

6 THE COURT: That's the one I was thinking.

7 MS. PARKER: That mediation has, unfortunately,  
8 reached a standstill, due to a lack of production of documents  
9 from NECC disclosing Liberty's involvement in the Cleanroom on  
10 an ongoing basis since the time of installation. We now have  
11 had some additional documents produced by NECC. Those  
12 documents have either been produced to Liberty or are in the  
13 process of being produced to Liberty now and we're optimistic  
14 that will get that mediation moving forward again.

15 As to Inspira, who is a New Jersey pain clinic, that  
16 entity is participating in a private mediation. The  
17 plaintiffs have made a demand of Inspira and the mediation is  
18 hopefully being scheduled for the first week in June.

19 As to Victory, who is another one of the national  
20 defendants --

21 THE COURT: Let me go back for a moment to Liberty.

22 Is there a court that is in any way supervising or  
23 encouraging the production of documents or is it done entirely  
24 between the parties?

25 MS. PARKER: It has been done so far, your Honor,

1 through an informal process wherein NECC was sharing documents  
2 with the Plaintiffs' Steering Committee subject to some  
3 provisions. It has also been done with the assistance of the  
4 mediator there, which is Ms. Carmin Reiss, and the trustee and  
5 the various parties in mediation have worked together to  
6 attempt to resolve that issue. To date we have not had to ask  
7 this Court to intercede, but it would be this Court that has  
8 the power and ability to do so, if necessary.

9 THE COURT: Despite the stay?

10 MS. PARKER: That's correct, your Honor. This Court,  
11 pursuant to the mediation order, has the ability to intercede  
12 and to make decisions to move the mediation along.

13 THE COURT: Mr. Gottfried, do you agree?

14 MR. GOTTFRIED: I think you do have that power. I  
15 also would simply say that I think we have now produced  
16 everything they're looking for. So, I don't think there's any  
17 reason to intercede.

18 MR. HERMES: Your Honor, my name is Peter Hermes. I  
19 represent Liberty Industries.

20 There were arrangements finalized this morning for  
21 production of some 44,000 pages of documents which have not  
22 been produced. The mediation with Liberty will not go forward  
23 until such time as we have the opportunity to review and  
24 analyze those documents and determine whether they establish  
25 liability or even potential liability on the part of my

1 client. This has been done in cooperation with the  
2 Plaintiffs' Steering Committee.

3 There was a motion which was before the Court which  
4 has been withdrawn which would purportedly change the  
5 mediation order. The parties have come to an accommodation on  
6 that. The trustee cooperated with the Plaintiffs' Steering  
7 Committee and me in order to bring that about.

8 THE COURT: Is there anything for me to do at the  
9 moment?

10 MR. HERMES: There is one motion on the list today to  
11 extend the time for my client to answer. There is a hole in  
12 the various orders that says the affiliated defendants do not  
13 have to answer for some period of time. However, the non-  
14 affiliated defendants -- we have filed a motion to which no  
15 objection has been filed. It's Item C at the bottom of Page  
16 3, the top of Page 4. That motion would continue the time for  
17 either side -- or continue the time for my client to answer  
18 until either July 31st of this year or after either side opted  
19 out of the mediation.

20 THE COURT: Well, I made a note to that motion which  
21 says, "Why not allow it?"

22 MR. HERMES: I would like the Court to allow it, if  
23 your Honor pleases.

24 THE COURT: Any objection?

25 MS. PARKER: We have consented to that motion, your



1 Honor.

2 THE COURT: It is allowed.

3 MR. HERMES: Thank you, your Honor.

4 THE COURT: How about the other two motions for  
5 extension of time, which have nothing to do with Liberty,  
6 Cincinnati Pain and a briefing schedule?

7 MS. PARKER: The PSC has assented and agreed to both  
8 of those. So, we have no objection.

9 THE COURT: So they are allowed as well.

10 MS. PARKER: Thank you, your Honor.

11 THE COURT: Okay. Carry on.

12 MS. PARKER: So, as to Victory, who is another  
13 mediating defendant, Victory is one of the national  
14 defendants. They are an HVAC servicing company. Victory has  
15 requested some input from experts. We have retained an expert  
16 and are in the process of providing that information to  
17 Victory. I think everything is moving along in that  
18 mediation.

19 As to two Florida pain clinics who have nominally  
20 opted into mediation, we have not had much success in actually  
21 communicating with them and moving that ball forward. So, the  
22 PSC has made it a priority within the next week to identify  
23 whether we actually believe those mediations will be  
24 successful or whether or not we need to revisit the  
25 arrangements with those clinics.

1           And, finally, that brings us to one other entity who  
2           is mediating pursuant to a confidential order, and I will say  
3           simply that that mediation is also moving along.

4           As a practical matter, given the timing of the  
5           settlement and what we anticipate the timing of a bankruptcy  
6           plan and then approval, hopefully, of that plan, mediations  
7           will need to be wrapped up by the month of June in order for  
8           those mediating defendants to be able to participate in the  
9           bankruptcy plan and get the non-debtor releases that they are  
10          ostensibly seeking. So, June really now becomes the target  
11          date for deciding whether or not these mediations are  
12          functional or whether we need to resume litigating against  
13          those participating defendants.

14           THE COURT: Thank you very much.

15           MS. PARKER: I think that brings us, your Honor, if I  
16           may -- the Court might wonder where we're left after we deal  
17           with the settlements and assuming that the mediating  
18           defendants all, in fact, mediate to a successful conclusion.  
19           So, if I may. The PSC would wind up in a position where we  
20           would be litigating against the following:

21           UniFirst, who would be the single national defendant  
22           remaining in the litigation --

23           THE COURT: Which is the Cleanroom -- the other  
24           Cleanroom defendant?

25           MS. PARKER: Which is the company who was hired to

1 clean the Cleanroom, yes, your Honor.

2 MR. ELLIS: Well --

3 MS. PARKER: As well as other things --

4 MR. BRACERAS: It was just 90 minutes once a month,  
5 your Honor, just to put it in perspective.

6 MS. PARKER: The "cleaners," we'll call them.

7 We're also then litigating against some Tennessee  
8 defendants and I would lump those into two categories. You  
9 have the St. Thomas entities and the St. --

10 THE COURT: They just want out.

11 MS. PARKER: Excuse me?

12 THE COURT: They just want out.

13 MS. PARKER: Well, first they want out, yes, that's  
14 true. They filed several motions to ask the Court to do that.

15 So, you have the St. Thomas entities who are St.  
16 Thomas Health, St. Thomas Network, two Ascension entities, as  
17 well as St. Thomas Hospital, and then you have another group  
18 of Tennessee defendants that we refer to as "the Tennessee  
19 clinic defendants," which includes St. Thomas Clinic or Stop  
20 and See, Dr. Culclasure, Ms. Schamberg, the Howell Allen  
21 Clinic, Specialty Surgery Center in Crossville, and Dr. Lister.

22 We then have one New Jersey clinic against whom a  
23 number of cases have been filed. That clinic is Premier.  
24 You'll recall that in the mediation, the other New Jersey  
25 clinic that seems to have had a number of cases filed against

1 it, Inspira, is in the process of mediating its claim, which  
2 leaves the PSC in a position of litigating against Premier.

3 And then we have only a handful of clinics with four  
4 or fewer cases against them and rather than identify all those  
5 clinics, I'll just give you the states to give you a sense of  
6 what's remaining:

7 So, clinics in Ohio, Minnesota, New Hampshire,  
8 California, Rhode Island and Illinois each have four or fewer  
9 cases against them. I'll say that most of those are single-  
10 clinic cases where one patient has named a clinic as a  
11 defendant.

12 THE COURT: What's happening with them? They're just  
13 sitting there?

14 MS. PARKER: At the moment, they are just sitting  
15 there, your Honor. A couple of those clinics have filed  
16 motions to dismiss, some of which will be the subject of the  
17 extensions that you have just granted now, the assented-to  
18 extensions and briefing schedule on those. Some of them are  
19 just sitting there. Some of those clinics have not moved to  
20 dismiss those cases. So, those cases remain before the Court.

21 So, that's where we would be in a situation where the  
22 settlement goes forward and all of the ongoing mediations are  
23 successful. The universe that we're looking at would be  
24 active litigation against the Tennessee defendants, the New  
25 Jersey defendants, and then a handful of other pain clinics,

1 as well as UniFirst as the remaining national defendant.

2 Thank you.

3 MR. COREN: Your Honor, Michael Coren, co-chair,  
4 creditors' committee in the bankruptcy.

5 I just want to add one, that there is more to come,  
6 other states. For example, Maryland will shortly be in suit.  
7 That I can tell you because I'm preparing some of the papers  
8 for those to go into suit on behalf of my individual  
9 plaintiffs that my firm represents, and there are others.

10 There will be some additional -- some of the states  
11 will see more cases filed because we are now approaching the  
12 end of the second year in the two-year states. There will be  
13 more cases coming from other states, like the Carolinas, to  
14 give you an example, where there are the three-year statutes  
15 of limitations, including Florida. So, I guess we're in the  
16 eye of the storm at the moment.

17 There were 3,000 -- to give you some sense of some  
18 numbers, there were 14,000 vials administered. Some people  
19 got two shots, three shots. So, it's not 14,000 people, but  
20 to give you maybe a better number, 3,000 individuals filed  
21 claims for either wrongful death or tort injury in the  
22 bankruptcy.

23 THE COURT: Thanks for that good news.

24 (Laughter.)

25 MR. COREN: And we're trying -- one of the things

1 that I -- if I may just underscore.

2           There is a window of opportunity here for these  
3 clinics to try to resolve their liability, but there's a  
4 finite time now because we are advancing the plan of -- you  
5 know, the Chapter 11 plan, which is a principal function of my  
6 committee, and after this June date that Ms. Parker refers to,  
7 the ship is going to sail. So, now is the time if there is an  
8 interest in trying to resolve your liability on a global basis  
9 as opposed to somewhat of Armageddon now.

10           To the extent that you may need to be asked to allow  
11 them into the mediation order No. 394, we're willing to assent  
12 to those motions. I'm sure the PSC is willing to assent to  
13 those motions. So, I make a plea for them -- to consider them.

14           THE COURT: Okay. That takes care of Item 2 of  
15 Part A. The insurance declaratory actions, Ms. Parker.

16           MS. PARKER: Yes. Thank you, your Honor.

17           A number of insurance companies who face potential  
18 exposure as a result of insuring defendants that have been  
19 named in these lawsuits have filed declaratory judgment  
20 actions. Two of those involve defendant Ameridose and are  
21 pending in front of Judge Saylor in this district. Both of  
22 those actions have been scheduled for a status conference on  
23 Monday, April 14th, and I will mention to the Court that the  
24 Plaintiffs' Steering Committee has moved to intervene to  
25 assert the plaintiff victims' rights in those actions, and

1 we'll be addressing those motions hopefully with Judge Saylor  
2 on Monday.

3 As to the ARL declaratory judgment action, my  
4 understanding with the counsel who are dealing with a  
5 tentative settlement with ARL are determining how best to  
6 resolve and tie up that action, but we believe that that will  
7 be resolved by the next status conference, hopefully, which  
8 brings us to the most-recently filed action, which is an  
9 insurance declaratory judgment action filed by Star Insurance  
10 Company against Michigan Pain.

11 THE COURT: That's a new one?

12 MS. PARKER: Yes.

13 THE COURT: New on the list?

14 MS. PARKER: Yes, your Honor, that's very new. In  
15 fact, I understand it's been filed but not has even been  
16 served yet. That is an action against Michigan Pain  
17 Specialists, which is the largest clinic in Michigan and we  
18 believe has the largest number of victims in the State of  
19 Michigan, but not --

20 THE COURT: Well, who are not yet parties -- they're  
21 not plaintiffs in this case?

22 MS. PARKER: That is largely correct, your Honor.

23 THE COURT: The clients of the pain specialist  
24 company are not yet in this case?

25 MS. PARKER: I believe there are, in fact, maybe two

1 or three cases on file in this MDL involving Michigan  
2 plaintiffs, but it is not the universe and they are not named  
3 in many short-form complaints, for example, the way the  
4 Tennessee or New Jersey defendants were, that's correct.

5 THE COURT: Now, status of discovery, Mr. Sobol.

6 I assume that the motion to partially lift discovery  
7 should await at least for the next step of the settlement,  
8 which it seems to hinge on.

9 MR. SOBOL: So, the position of the PSC, my position,  
10 your Honor, is no, it shouldn't wait any longer.

11 THE COURT: But everybody else thinks otherwise.

12 MR. SOBOL: Yes, that's right. So, I'm going to be  
13 swimming uphill here, but would you give me a two-minute shot  
14 at it? Thank you.

15 THE COURT: Is this a motion that I should now  
16 decide?

17 MR. SOBOL: Yes. Well, let me be serious and explain  
18 why it is that I think this is actually important to protect  
19 the interest of the victims.

20 First, let me make it clear, if the settlement goes  
21 through and if Judge Boroff approves the settlement, the  
22 settlement explicitly says that discovery goes forward. It  
23 doesn't say --

24 THE COURT: Why not wait a month or two? I mean, if  
25 it's going to be signed tomorrow and there's an approval



1 hearing within two months.

2 MR. SOBOL: Because we're trying to get discovery  
3 going so that we can push pain clinics to be able to settle  
4 things before June or July of this year so that we can put the  
5 money into a pot. Now, let me be very concrete with it with  
6 respect to that.

7 One of the positions St. Thomas entities have been  
8 taking is, Let's not do anything in the case -- as far as I  
9 understand it, Let's not do anything in the case yet because  
10 we can't get any discovery from NECC.

11 Until this morning we were having a problem with  
12 Liberty because Liberty was saying, We're not going to go  
13 forward with our mediation unless we have some documents,  
14 right. There are other entities that are out there that we  
15 would like to be able to say, If you need some information,  
16 here's the information you're going to be able to need. Let's  
17 go to mediation posthaste and move forward with it.

18 This is also something that has to happen, anyway.  
19 I've made that position clear to Judge Saylor previously. He  
20 understood it. He shot me down, sure, but at the time what we  
21 thought was -- what the purpose of waiting was to wait until  
22 the settlement is signed, and people thought at that point,  
23 Well, it was only four weeks, Mr. Sobol. Don't worry, it's  
24 only four weeks. This is four months ago.

25 And now it's four months later and now the trustee's

1 position is, Let's not wait until it signed. Let's wait until  
2 it's approved by Judge Boroff and then we'll see and then  
3 we'll start having our meet-and-confers.

4 So, the bottom line -- if I may, the bottom line will  
5 be if the stay stays in place, that we have now put a finite  
6 limit to the people who are going to be coming into this pot,  
7 because we won't be able to work out any more resolutions by  
8 the summer of this year, and that's the practical reality of  
9 keeping the stay in place, the stay that everybody knows has  
10 to be lifted at some point, anyway. That's --

11 THE COURT: I feel duly threatened.

12 MR. SOBOL: Excuse me?

13 THE COURT: I feel duly threatened.

14 MR. SOBOL: Thank you very much. Then I've  
15 accomplished my point.

16 THE COURT: Let me ask to the extent -- Mr.  
17 Gottfried, to the extent that the trustee or whoever on behalf  
18 of the bankruptcy court and the bankrupt, is making available  
19 documents for the -- I think it's the Liberty, the Liberty  
20 mediation, is there any reason why those same documents should  
21 not be made available to the plaintiff, to the rest of the --  
22 you know, to the plaintiffs' group?

23 MR. SOBOL: It's not us -- if I may, it's not us that  
24 don't have those documents.

25 THE COURT: Well, the Tennessee people.

1 MR. SOBOL: But it's not the same documents that  
2 they're after. They're after different documents. Sorry.

3 THE COURT: They're after different documents?

4 MR. SOBOL: Yes. As an example --

5 THE COURT: So, getting those will help with nothing?

6 MR. SOBOL: Right. As an example, UniFirst's  
7 position, with all due respect to my brother counsel for  
8 UniFirst, their position is not only do we need discovery, but  
9 we have to wait for Armageddon before we can start going over  
10 this case.

11 THE COURT: Well, I can understand that. They're  
12 relatively new defendants.

13 MR. SOBOL: Fair enough.

14 MR. GOTTFRIED: Your Honor, if I may.

15 Just so it's clear, the trustee has produced to the  
16 Plaintiffs' Steering Committee, I think it's 43,000 or 44,000  
17 pages --

18 THE COURT: Out of how many?

19 MR. GOTTFRIED: -- of documents.

20 Well, these are the relevant -- we went through the  
21 meet-and-confer process. These are relevant documents, I  
22 would say, after a lengthy meet-and-confer process.

23 Those documents have been made available to a variety  
24 of different parties participating in the mediation and the  
25 thought was that it would be a carrot to have people

1 participate in mediation and discovery would be stayed and  
2 that if they were participating, they would get documents.

3           Having said that, given where we are today, which is  
4 we have certainly a number of parties who are participating in  
5 mediation and we have a number of parties who are not, the  
6 trustee would be prepared to permit the PSC to make the  
7 documents that the trustee has already produced to the PSC  
8 available to parties who sign on to the protective order in  
9 this case.

10           So, the only condition that the trustee would have to  
11 have Mr. Sobol make those documents available to the parties  
12 is that they sign the protective order in the case.

13           The biggest concern that the trustee has had, in  
14 addition to encouraging people to participate in mediation, is  
15 to not be burdened by these discovery requests, but if the PSC  
16 is willing to pick up the requirement of making these  
17 documents available, as long as people sign the protective  
18 order, if that helps facilitate others to join mediation, we  
19 would be great with that. If that is sort of a half a loaf,  
20 they have 44,000 relevant pages to chew on while we are -- our  
21 biggest thing is we want to be focused on getting the  
22 settlement done. It is difficult. It is complex. There are  
23 multiple parties. The idea that we should be distracted on  
24 general answering interrogatories and document requests just  
25 doesn't seem like the appropriate focus.

1           So, our suggestion is that we stay until the  
2           settlement is approved, hopefully. At that point we take up  
3           the issue of broad discovery, but in the interim right now,  
4           the documents that we've produced, some 44,000 pages, be made  
5           available through the PSC, so the trustee's limited resources  
6           are not wasted, to parties who sign on to the protective  
7           order, which we think that is a critical condition.

8           THE COURT: Any reason why that wouldn't help?

9           MR. SOBOL: Well, since the documents that we  
10          understand the St. Thomas wants aren't the documents we  
11          already have, it's not a solution.

12          THE COURT: But it may be some help to them.

13          MR. SOBOL: Well, it may be. I'm not saying it's not  
14          a genuine effort. Of course, it's a genuine effort by them,  
15          but the problem -- it doesn't answer the problem.

16          And I'll also say this, your Honor, because I think  
17          it's important to understand. Mr. Fern and his office are the  
18          people who produced the documents. He's done a very good job.  
19          Mr. Fern is not involved in the settlement discussions and Mr.  
20          Fern's bills aren't paid for by the trustee. They're paid  
21          for, if I understand it, by the insurer.

22          So that there's no burden to the trustee or to Mr. --  
23          or to Duane Morris from having to produce these documents.  
24          The burden -- and he's been very good at it. He can be  
25          burdened by it. Mr. Fern's office can produce the documents,

1 because, you're right, it's not what we got. It's what we  
2 haven't gotten that remains to be the problem.

3 By saying that, I do not mean to be whiny. I do  
4 understand that is a fair gesture by Mr. Moore, you know, by  
5 Duane Morris to produce documents or to have us be allowed to  
6 produce what we've got, but that doesn't solve the problem we  
7 have. And everybody recognizes that this is a process that's  
8 going to have to go forward, no matter what, anyway. That's  
9 the best I can tell you.

10 THE COURT: Mr. Fern, is there any reason why that  
11 process can't go now? Now, I understand there is a view that  
12 it shouldn't go on while the settlement -- until the  
13 settlement is, more or less, completed, but if, in fact, your  
14 role is separate and apart from the settlement, why could not  
15 the discovery process go on now? You know, that may be a  
16 totally stupid question and you're entitled to say so.

17 MR. FERN: Judge, as specially-retained counsel for  
18 the trustee, I think that directive directly stills the  
19 trustee. His concept was giving up documents was an incentive  
20 to get defendants to the mediation table and, therefore, they  
21 would not be burdened by discovery between the PSC and those  
22 defendants.

23 That has worked. As Ms. Parker just told you, many  
24 national defendants and a number of state defendants,  
25 injectors, as you called them last time, have come to the

1 table and a number have already reached agreement.

2           There are -- I'm not prepared, Judge, but there are  
3 terabytes of documents that were collected in this case on the  
4 first couple of weeks after this tragedy first occurred. We  
5 are not prepared to do any wholesale dumping of these  
6 documents.

7           At some point, as Judge Saylor said, and as even St.  
8 Thomas entities told Magistrate Boal early this morning, there  
9 has to be some type of meet-and-confer process, whether under  
10 Rule 26(f), because the St. Thomas entities want some  
11 documents. The Tennessee clinics want different documents.  
12 UniFirst wants different documents. That, indeed, Judge,  
13 would be a burden to answer the document demands coming from  
14 multiple parties all seeking different documents.

15           THE COURT: So, how do you propose one should go  
16 ahead with this process, since everybody seems to agree that  
17 that kind of a process is necessary?

18           MR. FERN: Well, it may be necessary, Judge, but it  
19 would be imprudent to do it until the bankruptcy Judge Boroff  
20 signs off on the 9109 motion for approval of the settlement  
21 agreement, which is very close to being effectuated.

22           THE COURT: All right. Well, continue to give -- did  
23 you want to say something?

24           MR. MORIARTY: I have a few things to say, your  
25 Honor.

1 THE COURT: You go right ahead.

2 MR. MORIARTY: Matt Moriarty for Ameridose.

3 THE COURT: I'm sorry. You are?

4 MR. MORIARTY: Matt Moriarty for Ameridose.

5 The byplay that you've had with Mr. Fern, Mr. Sobol  
6 and Mr. Gottfried is all about NECC documents. There's a  
7 completely separate issue because the PSC and now two  
8 Tennessee defendants are trying to get the stay lifted as to  
9 affiliated defendants who are not NECC, okay?

10 THE COURT: Who are they?

11 MR. MORIARTY: My client Ameridose, GDC, which is a  
12 real estate company, some of the individuals.

13 THE COURT: But they are involved in the settlement.

14 MR. MORIARTY: They are involved in the settlement,  
15 but no one has ever asked for Ameridose or other affiliated  
16 defendants to produce documents to facilitate mediation or  
17 settlement. There's never been any even informal discovery.

18 So, let me comment on this, because there are several  
19 motions before you about this, and I first only want to talk  
20 about procedure. This motion --

21 THE COURT: I think that's the only thing I want to  
22 talk about.

23 MR. MORIARTY: Okay. This motion to lift the stay as  
24 to the affiliated defendants is not ripe for oral argument.  
25 It's not ripe for decision.



1 THE COURT: Well, then you're in agreement that we  
2 only talk about the procedure.

3 MR. MORIARTY: Yes, because -- their motion was filed  
4 in October. Our brief in opposition was filed in January.  
5 Within the last two weeks two different Tennessee clinic  
6 defendants, out of rule and without leave of this Court, filed  
7 briefs, supporting the PSC. This is a vital issue.

8 We actually followed the Federal Rules of Civil  
9 Procedure and moved this Court for leave to respond to those  
10 briefs. So, it's not ripe today. We still need our chance,  
11 as do GDC, and the other affiliated defendants, like MSL.

12 There is no reason why this has to be decided  
13 immediately for the reasons that Mr. Gottfried talked about.

14 THE COURT: Okay.

15 MR. MORIARTY: This is really important and it's a  
16 vital issue.

17 And Mr. Sobol -- I'm not one to use a lot of Latin,  
18 but I love the phrase *ipse dixit*, because Mr. Sobol stands up  
19 and the Tennessee defendants will stand up and say, Well, this  
20 is inevitable that this is going to happen, and they'll say  
21 everybody knows that this discovery is going to happen.

22 Well, as to the affiliated defendants who did not  
23 compound this product, didn't distribute this product, didn't  
24 warehouse this product, and didn't necessarily have contracts  
25 with UniFirst or Tennessee clinic defendants or anybody else,

1 we do not believe that their statement that this discovery is  
2 inevitable and is going to happen at some point is true.

3 THE COURT: Thank you.

4 Now, I think we are finished with -- oh, more?

5 MR. KLARFELD: Your Honor, Joshua Klarfeld on  
6 behalf --

7 THE COURT: I think you can pull that thing toward you.

8 MR. KLARFELD: I'm short. Joshua Klarfeld on behalf  
9 of --

10 THE COURT: It's long.

11 (Laughter.)

12 MR. KLARFELD: We find ourselves in the same position  
13 as Mr. Moriarty's client and I would really just echo --

14 THE COURT: Who is your client?

15 MR. KLARFELD: GDC. And I would echo everything that  
16 he has said to the Court, particularly about timing. We don't  
17 believe that this motion is ripe because of the recent  
18 developments and to the extent the Court is inclined to  
19 consider it at this time, we would still note that the --  
20 getting the settlement done is of primary importance and  
21 anything that would detract from that would really be  
22 detrimental. That's all I have to add.

23 THE COURT: Thank you. Mr. Gottfried.

24 MR. GOTTFRIED: Just to respond briefly.

25 The idea that Mr. Fern would be doing this in a

1 vacuum is simply incorrect. Mr. Moore and our office would be  
2 very heavily involved in responding to discovery and dealing  
3 with it. You know, PMIC is not necessarily -- as NECC's  
4 insurers, is not responsible necessarily for responding to  
5 discovery directed from other parties.

6 So, this should be put off until the settlement is  
7 finalized and approved. At that time a discussion should  
8 occur. I think the trustee's suggestion that the documents  
9 that the PSC has had and produced over 43,000, 44,000 pages  
10 could be made available to parties now provided they sign the  
11 protective order, is a reasonable compromise to let people go  
12 forward, and we hope that the Court will adopt.

13 THE COURT: Let me ask you, Mr. Gottlieb, to let me  
14 know, and I assume also the principals in the case, when the  
15 settlement is signed and what the projection is as to when the  
16 settlement will come before the bankruptcy judge for approval.

17 MR. GOTTFRIED: Of course. How would you like us to  
18 do that?

19 THE COURT: I assume that will -- I gather you think  
20 it will be signed next week. So, at that point you may be  
21 able to also have some idea of when the hearing will be.

22 MR. SOBOL: File a notice, your Honor.

23 MR. MOLTON: Your Honor, what we'll do -- David  
24 Molton for the committee.

25 What we'll do is we'll file a notice of -- a notice

1 in the MDL, a notice of filing of the 9019 motions that are  
2 concurrently filed in the bankruptcy. That way not only will  
3 those folks in the NECC and bankruptcy get notice of the 9019,  
4 but the folks in the MDL as well your Honor will also see the  
5 fact that the 9019 motion was filed in bankruptcy court.

6 And, also, Judge, you have our papers joining the  
7 trustee's position on this. So, I'm not going to belabor the  
8 record, but the committee itself supports the trustee's  
9 position vis-a-vis this particular --

10 THE COURT: I have seen your papers. And I think I  
11 will do nothing on these two motions. That is, PSC's motion  
12 to partially lift discovery and Tennessee clinic's motion to  
13 reconsider, that's it on those two issues, until I hear the  
14 next -- what the next step is.

15 MR. SOBOL: You should know, your Honor, that in  
16 connection with the settlement, in addition to a motion that  
17 will be filed with the bankruptcy court for a form of  
18 preliminary approval, there'll also be a motion presented to  
19 you that will establish a different form of a stay as to the  
20 affiliated entities and the individuals. So that you'll also  
21 get a motion, too, for your own consideration.

22 THE COURT: I look forward to it.

23 All right. That now takes us through Paragraph 4(a),  
24 (b). And to the extent the trustee's response is (c), that as  
25 well.

1 MS. PARKER: I think that brings us to No. 5, status  
2 of litigation.

3 THE COURT: Status of litigation.

4 MS. PARKER: So, we've talked already, your Honor,  
5 about what litigation in this MDL will look like after the  
6 settlements and assuming these mediations are successful.

7 I will let Mr. Chalos speak about the Plaintiffs'  
8 Steering Committee's submission that identified a plan in  
9 order to get through some discovery milestones and some  
10 Bellwether process to get to a Tennessee trial, and I'll let  
11 him address that.

12 I will mention that what is contemplated on a broader  
13 scale is a completion of the ongoing motion to dismiss  
14 briefing, which is in various stages as to the various pain  
15 clinic defendants.

16 THE COURT: These are the Tennessee -- the two  
17 Tennessee parties?

18 MS. PARKER: That's correct, your Honor.

19 THE COURT: And a couple of others.

20 MS. PARKER: That's correct, your Honor.

21 THE COURT: Primarily the two Tennessee.

22 MS. PARKER: Primarily, I would say, the two  
23 Tennessee entities and then also the Premier New Jersey  
24 defendants. Those defendants have the two biggest motions to  
25 dismiss briefing proceedings so far, although as I mentioned

1 earlier, there was a few clinics with a handful of cases that  
2 have also filed motions to dismiss.

3 Oh, and you know what? I'm remiss to not mention  
4 UniFirst has also filed a motion to dismiss and we're in the  
5 process of negotiating briefing schedule on that. If we  
6 haven't already submitted it, we will do so quickly and have  
7 that in front of the Court.

8 THE COURT: Okay.

9 MS. PARKER: Thank you.

10 MR. CHALOS: Your Honor, Mark Chalos for the  
11 plaintiffs.

12 We're prepared to argue the motion for entry of  
13 Bellwether trial and pretrial scheduling order. I think that  
14 UniFirst at the last hearing expressed a desire to be heard on  
15 that motion.

16 THE COURT: That's really Item 4 on the --

17 MR. CHALOS: It's Item 4, right, under Section B.  
18 So, we're prepared to argue that. We're also prepared to  
19 submit it on the papers, whatever your Honor prefers.

20 THE COURT: How does any Bellwether trial fit in with  
21 the pending motions to dismiss? I mean, you include the -- I  
22 gather, all of the conceivable Tenet parties in this.

23 MR. CHALOS: Right. Well, the motion --

24 THE COURT: Don't we need to deal with the motions to  
25 dismiss first?

1 MR. CHALOS: I don't think so, your Honor. Before  
2 you enter the schedule, I don't think so. The schedule  
3 accounts for a process to hear motions to dismiss.

4 Now, the St. Thomas entities have, I think, a  
5 slightly different issue than UniFirst, although I'll leave  
6 them to talk about that, but the St. Thomas entities have  
7 filed a total of, I think, five motions to dismiss. Two of  
8 the motions are confined to global issues. That is, it's  
9 confined to -- or they are confined to issues that relate to  
10 all or most of the Tennessee cases, and then they filed some  
11 case-specific motions to dismiss, which we've agreed -- St.  
12 Thomas defendants and us, in accordance with Judge Saylor's  
13 instructions, we've agreed that the case-specific motions  
14 would be put off and your Honor wouldn't have to decide the  
15 case-specific issues until and unless those cases are included  
16 in a Bellwether discovery pool.

17 THE COURT: The case-specific issues are the statutes  
18 of limitations?

19 MR. CHALOS: Statutes of limitations, although I  
20 don't think there are -- right, that would be an example of  
21 one. Any issue that involves or requires the Court to dig  
22 into the particulars of any given case, what happened on June  
23 15th, and did they go to the right place, or did they say the  
24 right things or write the right things.

25 But the order -- the pretrial scheduling order in the

1 Bellwether trial plan that we've submitted accounts for a  
2 staged motion to dismiss process, like the one we've entered  
3 into now. So, there's no reason to put off the Bellwether  
4 trial schedule for the purpose of hearing motions to dismiss.  
5 They can be done in tandem.

6 MR. BRACERAS: And, your Honor, if I could address  
7 that.

8 THE COURT: Hold it one second.

9 There is -- somehow there came to me a St. Thomas  
10 entities global motion to dismiss that was filed in one of the  
11 individual cases, not in the MDL. Can I just ignore that? I  
12 think it's identical to the --

13 MR. CHALOS: Sure, ignore it.

14 MR. STRANCH: We're fine with that, your Honor.

15 THE COURT: Throw it away, right?

16 MR. CHALOS: Yes.

17 (Laughter.)

18 MR. CHALOS: They're here. Maybe they can address it.

19 MS. GREER: Marcy Greer. I represent the St. Thomas  
20 entities.

21 We filed that motion in the Temple case because it  
22 was the only case in which a long-form original complaint had  
23 been filed and no short-form was filed. So, it wasn't covered  
24 by some of the Court's prior orders. So, we had to file a  
25 motion in that case. The issues --



1 THE COURT: But that case is now part of the MDL,  
2 isn't it?

3 MS. GREER: It is, your Honor, but the orders and the  
4 agreements of the parties addressed cases where short-form  
5 complaints were filed and there was going to be a master  
6 complaint and then short-form complaints. The Temple  
7 plaintiffs did not file a short-form complaint. So, to  
8 protect the record, we had to file a motion to dismiss in that  
9 case. It is identical to the others and we've listed Temple  
10 to be addressed locally because the same ruling should apply  
11 to all of the plaintiffs.

12 Our issue is vicarious liability. We did not have a  
13 hospital room or a clinic that administered --

14 THE COURT: But if I decide the issue of vicarious  
15 liability, presumably under the law of Tennessee, then it  
16 would cover the other case as well, would it not?

17 MS. GREER: Absolutely, it would, your Honor.

18 THE COURT: So, I can't ignore it.

19 MS. GREER: Well --

20 THE COURT: I decide it in one case, but not in both.

21 MS. GREER: Right. But when the Court issues a  
22 global ruling, it will apply to the Temple case as well.

23 THE COURT: All right.

24 MR. BRACERAS: Your Honor, I just wanted to say on  
25 behalf of UniFirst, we agree with the Court's instinct on

1 this, that it's just too early and premature to argue this  
2 motion, which -- the Bellwether motion, essentially, is making  
3 a plan for --

4 THE COURT: I'm not sure I said that.

5 MR. BRACERAS: Well, I want you to say it.

6 The idea of the Bellwether motion and the discovery  
7 plan is to make a plan to select representative cases to be  
8 tried, whatever, a year, two years from now.

9 Now, we've just heard --

10 THE COURT: In 2015, as I recall.

11 MR. BRACERAS: Well, if you think that we're going to  
12 have a trial in this case in 2015, a year from now --

13 THE COURT: I don't understand why not. I mean,  
14 there are several defendants, but they all raise substantially  
15 the same issue. It's not clear to me why one even needs to  
16 wait until 2015. It's a negligence case.

17 MR. BRACERAS: Well, certainly, UniFirst raises a  
18 much different position than the clinic defendants.

19 THE COURT: I confess, I haven't studied these  
20 papers. So, I may be speaking totally out of turn, but --

21 MR. BRACERAS: So, the idea -- and plaintiffs would  
22 agree with this -- is that when you have hundreds of  
23 plaintiffs here, is that ultimately you select certain  
24 representative cases to try, and at this stage, where we've  
25 heard represented to us that we're going to have an Armageddon

1 of new cases coming, where we are still debating over  
2 discovery from NECC, which is perhaps going to -- that  
3 discovery will get to us in another month or two, where we  
4 still have certain national defendants in mediation, these are  
5 all parties that when they're joined to the litigation will  
6 want to have a say in how we select Bellwether cases,  
7 representative cases to go forward. So --

8 THE COURT: Why isn't that possible, to have a  
9 schedule for Bellwether trials without identifying the  
10 particular parties to be involved in that trial until sometime  
11 later?

12 MR. BRACERAS: Well, if you are -- let's take a  
13 defendant that's going to be added in Michigan, and you're not  
14 even in this courtroom because you're not a party, you're not  
15 a litigant, and you're added to this case in June or whenever  
16 the Armageddon is. Presumably, they would want to have a  
17 right to say how their own case is going to get litigated.  
18 And this is an MDL for, we've heard, 3,000 potential claimants  
19 in 17 different jurisdictions.

20 The way it's currently cast and what the Bellwether  
21 motion -- plaintiffs' current Bellwether motion anticipates is  
22 to have cases -- Bellwether trials of just Tennessee  
23 plaintiffs in just Tennessee. Now, how is that representative  
24 of the other 16 jurisdictions, where there are hundreds of  
25 other plaintiffs, have different law?

1           And as Judge Fallon has written in, you know, really,  
2           one of the leading pieces on MDLs, is that the most --

3           THE COURT: Who is Judge Fallon?

4           MR. BRACERAS: Judge Fallon? He's a graduate of Yale  
5           Law School and is now in the District of Louisiana, and he  
6           presided over a couple of MDLs, and both the plaintiffs and  
7           defense cite to Judge Fallon in their papers on this, because  
8           he really is a leading authority on MDLs and Bellwether  
9           procedure.

10          THE COURT: I'm sure I've met him at one of these  
11          multi-district affairs.

12          MR. BRACERAS: Yes. And he speaks a lot on the MDLs.

13          And what Judge Fallon has said -- and we've cited  
14          this -- that the first step -- the very first step that a  
15          transferee court must take is to identify and catalog, and I'm  
16          quoting, "the entire universe of cases that comprise the MDL."

17          And what we suggest is that we take that first step,  
18          and it might be a month away, it might be whenever we have a  
19          resolution of the mediations.

20          And I must point out that we can have a deadline to  
21          the mediation without precluding the possibility of settlement  
22          down the road.

23          And Mr. Sobol makes a good point about the  
24          bankruptcy, participating in a bankruptcy, separate issue, but  
25          just because we're asking that other defendants and that other

1 parties and other jurisdictions be involved in this process to  
2 make it more representative and more efficient doesn't mean  
3 that we're asking to delay this for a year.

4 The parties that have currently been mediating have  
5 been mediating for months, and there can be a deadline to the  
6 mediation. Those parties could be, you know, ordered to be  
7 joined to this litigation, and then we could have a more  
8 coordinated approach to how we address this issue.

9 THE COURT: How long are we going to wait, until the  
10 two-year or three-year statutes of limitations run out?

11 MS. PARKER: Actually, six years, your Honor, is the  
12 longest.

13 MR. BRACERAS: Well, your Honor, I wonder. That's  
14 the most challenging issue, and we've been trying to think  
15 about whether the defendants, you know, try to, you know, add  
16 those parties by way of contribution claims to the extent that  
17 in certain jurisdictions, the national defendants have been  
18 sued where clinics may not have been sued. So, it --

19 THE COURT: You're turning this into an asbestos  
20 case.

21 MR. BRACERAS: The plaintiffs have already turned it  
22 into asbestos case.

23 So, your Honor, there's a number of issues. We can  
24 then get down to the details of the Bellwether motion about,  
25 you know, the time, about how you select the cases, how to

1 make the most representative, you know, whether you select 16  
2 cases for case-specific discovery or 20 cases, and we can get  
3 into those.

4 Maybe we want to refer that to Judge Boal for the  
5 details of that or we can argue that, but I think the broader  
6 issue is do we decide the motions to dismiss. This is what I  
7 suggest, is that UniFirst has a motion to dismiss. We don't  
8 think we should be in this case, but --

9 THE COURT: Why not?

10 MR. BRACERAS: Because we're just not liable.  
11 There's no way the plaintiffs can carry a burden against -- a  
12 case against us. And I don't know, your Honor -- you haven't  
13 read the papers, but if you like just some background on  
14 what --

15 THE COURT: No, not at the moment. I haven't even  
16 seen that motion, frankly.

17 MR. BRACERAS: It's not fully briefed. It's not  
18 fully briefed.

19 THE COURT: Well, then I think we should until it is  
20 fully briefed before we talk about the details of it.  
21 Clearly, there will have to be hearing on it.

22 MR. BRACERAS: Yes, clearly, but the parties --

23 THE COURT: The issue of the Bellwether -- I mean, I  
24 would like some assistance from counsel as to whether one  
25 could not go forward with some plan for Bellwether trials

1 without at the moment identifying -- I don't want to do it  
2 right know, but without identifying which cases are going to  
3 be the Bellwether cases. I mean, they're very similar cases.  
4 You get a Tennessee bunch and you get a New Jersey bunch and  
5 there are not likely to be huge numbers of differences between  
6 the plaintiffs and one defendant.

7 MR. BRACERAS: Well, what I would suggest is we could  
8 proceed with document discovery to the extent that that is  
9 unlikely to be --

10 THE COURT: I think the plaintiffs -- excuse me. The  
11 plaintiffs have to come up with some kind of a plan that  
12 includes sort of specifics as to how to do what when, and it  
13 is not clear to me why we cannot proceed along those lines  
14 without now identifying who the plaintiffs are whose trial --  
15 whose cases will go forward in a Bellwether trial, which  
16 appears to create some sense of unease among the parties.  
17 There has to be a bunch of general discovery that would apply  
18 in all cases that go forward.

19 MR. BRACERAS: Your Honor, I think that's correct  
20 with regard to the document discovery, but there's -- and so,  
21 that's certainly a place that you wouldn't run the risk of  
22 duplications, for instance, as opposed to deposition  
23 discovery, where you could imagine the same person being  
24 deposed numerous times as other parties are added to the  
25 litigation.

1           So, I think that the Court is correct that you could  
2 go forward with document discovery, but what we request is  
3 that we proceed with the motions to dismiss. We see where the  
4 parties are with respect to the mediation and whether the  
5 Court sets a deadline for the mediating parties to make clear  
6 who all the litigating parties are so that all the litigating  
7 parties can reach some resolution of these issues.

8           In the meantime, while we do the motion --

9           THE COURT: I think you should give up representing  
10 your clients and be my assistant.

11          MR. BRACERAS: You want me to sit here?

12          THE COURT: Thank you.

13          MR. CHALOS: Your Honor, I just have a few brief  
14 points to make.

15          The proposal that -- the structure that we've  
16 proposed, the plaintiffs, does nothing more than set forth  
17 some achievable goals, a trial in May of 2015, with a second  
18 trial a month or so after that, and set forth a framework that  
19 makes clear how the cases will proceed in an orderly way. It  
20 doesn't presuppose anything substantive.

21          THE COURT: Okay. I will look at it and I will look  
22 at the objection.

23          Incidentally, there are a couple of other motions  
24 that should be allowed. There is No. 1008, PSC's motion to  
25 leave to file a sur-reply to 790, I think. And there is a PSC



1 motion for leave to file reply in the Bellwether motion, which  
2 is No. 987. I think that the Tennessee clinic defendants'  
3 motion for reconsideration on access to NECC documents is  
4 denied, without prejudice to reconsideration at sometime in  
5 the future, if that's appropriate. And, otherwise, I have to  
6 look at the Bellwether. I have not studied the documents and  
7 the several motions to dismiss that I think are ripe,  
8 particularly the Tennessee ones and the New Jersey ones, I  
9 think you said was also ripe.

10 MR. GOTTFRIED: Your Honor having allowed 1008 for  
11 the PSC to file a sur-sur-reply, the trustee at 1030 had filed  
12 a motion for leave to file a reply to that.

13 THE COURT: Yes, but let me add one thing. I would  
14 like the sur-replies to be no longer than five pages.

15 MR. GOTTFRIED: I think ours might be only five or  
16 six pages, actually.

17 MR. COREN: Your Honor --

18 THE COURT: All the briefs are too long in this case.

19 MR. COREN: Your Honor, Mike Coren. I'm going to  
20 wear my New Jersey lawyer hat for one second.

21 The Premier motion that -- there is going to be a  
22 motion filed shortly, for leave to file a sur-reply of four  
23 pages.

24 THE COURT: It will be allowed subject to the five-  
25 page limit.

1 MR. COREN: Thank you, your Honor.

2 THE COURT: Ms. Urso has made a note of that.

3 MS. GREER: The St. Thomas motions to dismiss are not  
4 fully briefed yet. We have a reply brief deadline of May 7  
5 and then they will be ripe.

6 THE COURT: Your reply brief will also be no more  
7 than five pages. So, you can certainly meet that deadline,  
8 right?

9 MS. GREER: It's a lot harder to write a short brief  
10 than a long one. Thank you, your Honor.

11 THE COURT: All right. I think we are down to Item  
12 C, are we not?

13 MR. STRANCH: Your Honor, we have one additional  
14 issue that we reached. You heard that there was some  
15 discussion about global versus individual motions to dismiss,  
16 and we've been trying to work on notice issues, which is a  
17 Tennessee statute that requires you provide notice prior to  
18 instituting a suit.

19 The Tennessee defendants have filed all those  
20 motions. We've almost reached an agreement on which portions  
21 of those are truly global in nature and will be briefed and  
22 which ones are truly individual in nature and will come up  
23 once they enter the Bellwether discovery pool.

24 Right now our responses to those motions to dismiss  
25 are due all on the 14th. We've agreed with both Tennessee

1 defendants to bump those responses to the 28th of April.

2 THE COURT: Done.

3 MR. STRANCH: Great. Thank you.

4 MR. SOBOL: The other thing, your Honor, before you  
5 move on to C, briefing in progress. At the last status  
6 conference --

7 THE COURT: I'm not having much progress today.

8 MR. SOBOL: We're making progress. I think I'm 0 for  
9 whatever today.

10 B(3), your Honor, the parties had agreed to submit  
11 that at the last status conference on the papers. I think  
12 that we're --

13 THE COURT: Well, I have a question. Is it ripe?

14 MR. SOBOL: Oh, yes.

15 THE COURT: Okay.

16 MR. SOBOL: And I think that -- now that we've had a  
17 sur-sur-sur-sur-reply --

18 THE COURT: That's the assessment --

19 MR. SOBOL: Yes.

20 THE COURT: -- the assessment motion?

21 Does that need a hearing?

22 MR. SOBOL: It's the -- yeah. It's the assessment  
23 motion B(3), your Honor.

24 THE COURT: I mean, do I have to have an oral  
25 argument on that motion?

1 MR. SOBOL: I believe that the parties agreed that we  
2 could submit it on the papers and you could read the papers,  
3 unless you want argument.

4 THE COURT: No. No. We'll decide it without  
5 argument.

6 MR. GOTTFRIED: So, since you are deciding that  
7 without argument, you allowed our motion to file our reply.  
8 It's only five and a half pages.

9 THE COURT: Yes, that was one of them.

10 MR. GOTTFRIED: Okay.

11 MR. MOLTON: Judge, that was Document 1030 and that's  
12 a joint motion.

13 THE COURT: Well, there's also 1008 and there is  
14 1030, both allowed, five pages.

15 MR. GOTTFRIED: Five and a half. It's attached to  
16 our motion.

17 MR. MOLTON: It's already filed.

18 THE COURT: Okay. Then four we have finished for  
19 today.

20 MR. SOBOL: Yes.

21 THE COURT: And five I think I have also finished,  
22 subject only to reconsideration or to review without prejudice  
23 if things change in the future.

24 That takes us to briefing in progress, the master  
25 complaint against affiliated defendants and responsive

1 pleadings. Anything to report on that?

2 MS. PARKER: Yes, your Honor. At the previous status  
3 conference, in light of the settlements we had discussed, that  
4 it is hoped that the PSC will not need to file a master  
5 complaint against the affiliated defendants.

6 The way that we handled it last month was your Honor  
7 agreed to extend the deadline for the PSC to file that master  
8 complaint by another 30 days, which has a current deadline of  
9 April 30th.

10 While we hope certainly that the settlement will be  
11 done by then, we would ask out of an abundance of caution that  
12 the Court give us another month on that deadline. So, it  
13 would expire the end of May.

14 THE COURT: Fine.

15 MS. PARKER: Thank you.

16 THE COURT: Then the motions for extension of time we  
17 have dealt with earlier and they were all allowed.

18 That takes us to three, Ameridose motion to destroy  
19 recalled products, which has not yet been filed. So, I'm not  
20 sure why we need to talk about it.

21 MR. MORIARTY: It will be filed with a few days, your  
22 Honor.

23 THE COURT: Good. So we'll talk about it next month.

24 MR. MORIARTY: Sure.

25 Your Honor, one housekeeping matter. I'm sorry to do

1 this, but can we go back just to B(1)?

2 THE COURT: I want to go forward.

3 MR. MORIARTY: We go forward so fast, sometimes I get  
4 left behind.

5 The only reason I mention B(1) --

6 THE COURT: I'm sorry. What are we going back to?

7 MR. MORIARTY: B(1). It's the fully-briefed motion  
8 to -- supplemental motion to transfer cases.

9 THE COURT: I thought I heard argument on that the  
10 last time and it is subject -- it is on my desk to be decided.

11 MR. MORIARTY: Okay.

12 THE COURT: In fact, we had a lot of arguments about  
13 that last time.

14 So, we go back again to dispositive motions.  
15 Tennessee clinic still has a response coming on something,  
16 right?

17 MR. STRANCH: Your Honor, on that summary judgment  
18 brief, pending before you, but not listed here, is a motion  
19 for leave to file a reply to the 56(d) designation that the  
20 PSC did in that one. The St. Thomas clinic Stop and See has  
21 opposed that. And so, that's for your consideration and I  
22 believe if that's granted, it's fully briefed and we're --

23 THE COURT: You want to file a reply?

24 MR. STRANCH: We're already filed it with the Court.  
25 We filed a motion to leave and attached it to --

1 THE COURT: Well, that is allowed, over objection.

2 MR. STRANCH: Thank you.

3 THE COURT: But is it --

4 MR. STRANCH: I think that makes it -- it's over five  
5 pages, I believe, your Honor. I'm not positive how many.

6 THE COURT: It's not six or seven. It's probably 22.

7 MR. STRANCH: It's not 22. I think it's more like  
8 about nine and --

9 THE COURT: Well, I'll read the first five pages.

10 MR. SOBOL: Just read the first five pages.

11 THE COURT: Or any five you want me to.

12 (Laughter.)

13 MR. STRANCH: To be fair, your Honor, it takes a page  
14 and a half just to list all their names, the defendants.

15 THE COURT: So, that motion is now ripe. And do I  
16 need to hear argument on that?

17 MR. STRANCH: We think it can go on the papers. If  
18 the Court believes oral argument would be helpful, we would be  
19 happy to argue the matter before the Court.

20 THE COURT: You are?

21 MR. TARDIO: Chris Tardio on behalf of the Tennessee  
22 clinic defendants.

23 I'm fine with that motion being decided on the  
24 papers, the 56 motion that we filed on -- it deals with our  
25 certificate of good faith requirements.

1 THE COURT: Okay. So, I can decide that on the  
2 papers.

3 MR. STRANCH: Yes. To be clear, what we did, your  
4 Honor, it's a motion for summary judgment and we filed a Rule  
5 56(d) designation saying we need discovery before we can  
6 respond to it, and we ask that if the Court did deny the  
7 56(d), that we be given an opportunity to fully brief the  
8 legal issue -- legal issues that they raise. We think it  
9 needs more factual discovery first, but we're happy with it  
10 going on the papers, your Honor, or oral argument if you  
11 believe it will be helpful for you.

12 THE COURT: I'm sorry. If I deny the 56(d) motion  
13 that you have filed, then what do you want me to do?

14 MR. STRANCH: Just give us an opportunity to respond  
15 to the arguments that they made.

16 THE COURT: Okay.

17 MR. STRANCH: Because instead of going through a full  
18 legal response to the arguments, we said we need this  
19 discovery before we can do that. It's also what Judge Saylor  
20 ordered. We lay it out pursuant to Rule 56(d).

21 THE COURT: And you don't object to that?

22 MR. TARDIO: To them having discovery as to --

23 THE COURT: No. If the 56(d) motion is denied,  
24 giving them time to respond to the merits.

25 MR. TARDIO: I think they've already responded to the



1 merits, but I understand that and I will not object to another  
2 responsive briefing filed.

3 THE COURT: You do object?

4 MR. TARDIO: No, I will not. Will not.

5 THE COURT: Okay.

6 MR. STRANCH: Thank you.

7 THE COURT: Ms. Parker.

8 MS. PARKER: I believe that brings us to the Premier  
9 motion to dismiss, your Honor.

10 THE COURT: Correct.

11 MS. PARKER: There is a sur-reply that the PSC  
12 intends to seek leave to file. We have advised counsel for  
13 Premier. In fact, counsel for Premier has advised us they  
14 don't object to us filing the motion for leave to file --

15 THE COURT: So that will be allowed, again subject to  
16 the five pages.

17 MS. PARKER: Thank you.

18 I will also mention that I understand -- we discussed  
19 briefly with counsel for Premier whether to ask the Court to  
20 set this for argument the next status conference. We don't  
21 know the date of the next status conference yet, which is  
22 something Mr. Fennell will yell at me if I don't bring it up  
23 with your Honor. But, also, we're not sure whether or not  
24 we'll be in a position to have that argued, but if the Court  
25 would like argument on that motion, we're happy to provide

1 that and work out a schedule with the defendant.

2 THE COURT: So, I should not deal with this until  
3 after the next meeting?

4 MS. PARKER: Correct. Correct, your Honor. Thank you.

5 THE COURT: Okay. Cincinnati Pain Management  
6 Consultant's Motion. Also next time?

7 MS. PARKER: Yes, your Honor. I believe that was  
8 subject to one of the scheduling extensions that you have just  
9 previously allowed. So, I think that takes us over to next  
10 time.

11 THE COURT: And Tennessee clinic defendants' motion  
12 to dismiss.

13 MR. STRANCH: Your Honor, that's the one that I  
14 mentioned earlier where we agreed to continue to meet and  
15 confer and try to work out the individual versus global issues  
16 by the -- you've already agreed to allow us to file that reply  
17 on the 28th of April.

18 THE COURT: Will it be ripe at that point or should  
19 we talk about it after --

20 MR. STRANCH: It will be after the next status  
21 conference, because when we file our response, then I think  
22 they've got a short reply, that we've agreed in the briefing  
23 schedule --

24 THE COURT: You'll get a status report on this motion  
25 next time?

1 MR. STRANCH: That's correct, your Honor.

2 THE COURT: And the global claims, similarly?

3 MR. STRANCH: That's the same thing. They're all  
4 tied together, your Honor.

5 THE COURT: And Ascension Health?

6 MR. STRANCH: All together, your Honor.

7 THE COURT: They're all together?

8 MR. STRANCH: Yes.

9 THE COURT: BKC?

10 MS. PARKER: BKC also is the subject of an  
11 assented-to motion that your Honor has just allowed. I,  
12 unfortunately, don't know the date of the last briefing.  
13 Pursuant to that schedule, off the top my head, I'm not sure  
14 whether it will be done before the next status conference or  
15 not.

16 THE COURT: And UniFirst is not yet ripe?

17 MR. BRACERAS: We filed the motion, but it's not yet  
18 ripe.

19 THE COURT: So, we'll talk about all of these next  
20 time.

21 Now, the matters referred to Judge Boal she's  
22 addressing, correct?

23 MS. PARKER: Yes, your Honor. We had a hearing this  
24 morning before Judge Boal. She is currently considering three  
25 matters:

1           The first is a motion for entry of deposition  
2 protocol, which was argued this morning. Second is a motion  
3 for entry of ESI protocol, which is unopposed. And third was  
4 a motion to compel production by a non-party subpoena  
5 recipient, Baltimore Pain Management, and we advised Judge  
6 Boal -- and by way of being helpful to the Court, I'll point  
7 this out as well, that depending on what Judge Boal does with  
8 the current motion to compel, the PSC anticipates additional  
9 motions to compel coming down the line, but we're waiting to  
10 see how Judge Boal deals with the issue that is currently  
11 before her before filing additional motions.

12           THE COURT: Incidentally, I had invited Judge Boal to  
13 come to these meetings if she wanted to, but she has been  
14 unable to for the last two. So, she may or may not show up  
15 the next time.

16           MR. SOBOL: Not after this one.

17           THE COURT: I think it's you guys who are the  
18 problem, not Judge Boal.

19           (Laughter.)

20           MS. PARKER: Decidedly correct, your Honor.

21           THE COURT: Now, when should we have the next  
22 meeting? May when?

23           MS. PARKER: We would suggest roughly 30 days from  
24 today. We would also ask the Court, if possible, given the  
25 number of lawyers that travel in from out of town, if perhaps

1 we could schedule the May, June and even July status  
2 conferences now so that we have some ability to plan around  
3 those.

4 THE COURT: Okay. Is the time 2 o'clock appropriate  
5 for all counsel? So, we would be talking about sometime  
6 around May 14?

7 COURTROOM DEPUTY CLERK URSO: Yes.

8 THE COURT: Is there any day of the week that's  
9 better?

10 MR. SOBOL: Just not --

11 MR. MORIARTY: Your Honor, just with that week, there  
12 is a national meeting that at least three of the lawyers that  
13 I know at this table attend every year and it's that week.  
14 It's the 14th, 15th and 16th. If we could avoid those.

15 THE COURT: There will be that less lawyers here.

16 MR. MORIARTY: Yes, that's true.

17 MS. PARKER: Aren't those lawyers going to be out of  
18 the case by then?

19 MR. MORIARTY: That would be nice. If I could be  
20 sure of that, I wouldn't be standing here.

21 The 13th would be fine.

22 THE COURT: Sure. We don't have a problem, do we,  
23 Lisa?

24 COURTROOM DEPUTY CLERK URSO: No.

25 THE COURT: 2 o'clock, on May 13th?

1 COURTROOM DEPUTY CLERK URSO: Yes.

2 THE COURT: And then in June?

3 COURTROOM DEPUTY CLERK URSO: One sec.

4 (Pause.)

5 COURTROOM DEPUTY CLERK URSO: We could do --

6 THE COURT: 10, 11, 12?

7 COURTROOM DEPUTY CLERK URSO: What about the 18th, at  
8 2:00, if we could do that?

9 MR. FERN: Perfect.

10 COURTROOM DEPUTY CLERK URSO: So, June 18th, at 2:00.

11 THE COURT: And July.

12 COURTROOM DEPUTY CLERK URSO: What about July 17th,  
13 at 2:00?

14 THE COURT: All Thursdays, right?

15 COURTROOM DEPUTY CLERK URSO: That's a Thursday --  
16 no. The 18th -- June 18th is a Wednesday, Judge.

17 THE COURT: I think we should make it the same day of  
18 the week. Is June 19th okay? So, we always have the same day.

19 MR. SOBOL: Sure.

20 THE COURT: What do we have on the 19th?

21 COURTROOM DEPUTY CLERK URSO: We have a sentencing at  
22 2:00.

23 THE COURT: I'm sorry?

24 COURTROOM DEPUTY CLERK URSO: We have a sentencing at  
25 2:00.

1 THE COURT: So, we'll do it after. We'll push it to  
2 3:00.

3 COURTROOM DEPUTY CLERK URSO: The sentencing?

4 THE COURT: Yes. And for July, it was --

5 MR. FERN: For clarification, you want Thursday, July  
6 19th, at 2:00 p.m.?

7 MR. BRACERAS: June 19th.

8 THE COURT: June 19th, so that we always do it on a  
9 Thursday. I'm a creature of habit and if I know it's a  
10 Thursday, then I know what to do.

11 COURTROOM DEPUTY CLERK URSO: July 17th, at 2:00.

12 THE COURT: Maybe in August we'll take a break.  
13 Maybe not.

14 MR. SOBOL: So, just following your habit, your  
15 Honor, then May 13th the first of those dates, you scheduled a  
16 Tuesday, not a Thursday.

17 THE COURT: Well, that's terrible. So, we go to the  
18 14th.

19 COURTROOM DEPUTY CLERK URSO: So, 15th --

20 THE COURT: May 14th.

21 COURTROOM DEPUTY CLERK URSO: Well, the gentleman  
22 can't do it on the 14th.

23 THE COURT: Oh, that's the bad -- yes. We all agree  
24 to have an out-of-order one in order to accommodate the people  
25 who are going to some kind of a meeting always, every year.

1           MR. FERN: We appreciate the accommodation, Judge.  
2 I'm one of those. Thank you.

3           MR. SOBOL: We should discuss their rates that day,  
4 your Honor.

5           THE COURT: Is there anything else that somebody else  
6 wishes desperately to talk about, including those on the  
7 telephone whom I can't see?

8           (No response.)

9           THE COURT: Well, I think this has been a successful  
10 meeting, therefore. I thank you all very much.

11           Did you want to say anything else?

12           MR. BRACERAS: No. Thank you, your Honor.

13           MR. STRANCH: Thank you, your Honor.

14           (Adjourned, 3:20 p.m.)  
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## C E R T I F I C A T E

I, Catherine A. Handel, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 64, constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the matter of Civil Action No. MDL-13-2419-RWZ, In Re: New England Compounding Pharmacy Cases Litigation.

April 14, 2014  
Date

/s/Catherine A. Handel  
Catherine A. Handel, RPR-CM, CRR